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## CHAPTER 14 UTILITY FACILITIES

### 14.1 INTRODUCTION

These procedures apply to construction projects on the local transportation system financed with Federal funds. Locally sponsored projects on the State Highway System are to be accomplished in accordance with the Caltrans *Right of Way Manual*.

The cost of adjusting (relocating) publicly and privately owned utilities is eligible for Federal participation **only** when the adjustment is made necessary by the proposed construction and the local agency is legally obligated to pay for the adjustment.

A determination must be made that the local agency is legally obligated to pay for the adjustment. Such a finding by the local agency's counsel is acceptable. The basis of the local agency's authority to pay for the relocation must be cited in its agreement with the utility owner.

The local agency must have a project specific agreement with each utility owner which includes plans showing the adjustments and which contains an estimate of cost. A copy of this agreement must be submitted to the District Local Assistance Engineer (DLAE).

### 14.2 FEDERAL POLICY

Federal policies, as detailed in 23 CFR 645, apply to all utility facilities which will occupy the rights of way on Federal-aid projects regardless of who bears the cost of installation, adjustment, or relocation. These policy requirements are summarized as follows:

- Utility facilities may be accommodated on the right of way provided such use does not impair the planned highway improvement or interfere with the free and safe flow of traffic thereon.
- Where utility facilities are to cross or otherwise occupy the right of way, the local agency and the utility owner shall agree in writing as to the terms of such use and occupancy, and the manner in which such facilities are to be accommodated thereon (For a discussion of the Utility Agreement, see Chapter 13 of the Caltrans *Right of Way Manual*).
- In any instance where utility facilities are to remain within the right of way, the local agency shall demonstrate the following before the contract is advertised:
  - a) A satisfactory agreement has been reached with the utility company for the rearrangement and/or accommodation of the utility facility.
  - b) The interest acquired by, or vested with, the local agency in that portion of the highway right of way to be vacated, used, or occupied by the utility facilities is of a nature and extent that it will not interfere with the construction, operation, and maintenance of the highway project.
  - c) The utilities to be retained, installed, adjusted or relocated on, over, under or along the highway within the right of way limits will be located and accommodated in a manner that will not impair the construction or maintenance of the planned highway, or interfere with its safe operation.

- d) Suitable arrangements have been made between the utility owner and local agency for accomplishing, scheduling, and completing the utility work; for the disposition of any facilities to be removed from or abandoned within the highway right of way; and for the proper coordination of such activities with the planned highway construction. Such arrangements should be made at the earliest feasible date in advance of the planned highway construction.

## 14.3 FEDERAL REIMBURSEMENT

There are three key documents associated with Federal reimbursement of utility adjustments:

- Authorization to Proceed (E-76)
- Specific Authorization to relocate utilities
- Approval of Utility Agreement

Caltrans has approval authority under the Alternate Procedure process (23 CFR 645.119) for “Specific Authorization” and “Approval of Utility Agreement” (see these sections below).

### AUTHORIZATION TO PROCEED

All facets of the right of way process (preliminary environmental studies, engineering, appraisal, acquisition, relocation, **and** utility relocation) for which Federal reimbursement will be sought, must be formally approved (authorized) by the FHWA (see Chapter 3, “Project Authorization” of this manual). The cost for work performed prior to the date of authorization (approval of the E-76) is not eligible for Federal funds.

Under the Intermodal Surface Transportation Efficiency Act (ISTEA), the authorization of utility relocation work has been delegated to Caltrans on projects exempt from oversight by the FHWA (see Figure 2-1). On nonexempt projects, the Authorization to Proceed must be obtained from the FHWA.

Utility relocations may be performed during the right of way or construction phases of work. The E-76 document must include a list of every utility to be adjusted, along with the best available estimate of the total costs involved, and request the use of the Alternate Procedure (23 CFR 645.119 (e)(2)).

### SPECIFIC AUTHORIZATION

Every utility adjustment where Federal reimbursement will be sought, also must receive Specific Authorization prior to beginning work (other than preliminary engineering). The items shown in Exhibit 14-A must be submitted to the Caltrans District Utility Coordinator with a request for Specific Authorization on behalf of the FHWA. Specific Authorization will not be granted without an Authorization to Proceed (E-76).

Any work not included in the plans and estimate submitted to Caltrans for Specific Authorization is ineligible for Federal participation. Any additions or major changes found to be necessary must be submitted for authorization in the same fashion as an original request.

Federal regulations require that everything be done in sequence; first, the E-76 listing utility companies and estimates, second, specific authorization, third, commence relocation work. The local agency may not go back after the fact and do the paperwork.

The adjustments to the facility for which approval is requested may be made either by the utility owner or the construction contractor:

- If the adjustments are to be made by the utility owner and Federal participation is requested, the field review form should include the item, with sufficient detail to allow programming the work in the right of way phase for approval by the FHWA under a utility agreement.
- If the adjustments are to be made during the construction phase by the local agency's highway contractor, the work should be included in the plans and specifications like any other work. A special clause will be added to the FHWA Specific Authorization and said Authorization must be attached to the Certification. Utility adjustment costs may be included in the contract as a bid item, as supplemental work, or as a contract change order and financed from funds in the construction work authorization.

Minor changes (does not include changes in scope of the work) and deletions may be covered by submitting a letter to Caltrans describing the change, including revised maps and estimate, and requesting that the change be included under the original authorization.

## APPROVAL OF UTILITY AGREEMENT

FHWA approval of the fully executed utility agreement must be obtained before charges may be vouchered for Federal reimbursement. This approval authority has been delegated to the Caltrans Right of Way Program by the FHWA.

It is essential that there be field verification by the local agency of all reimbursable utility work which has been accomplished.

## USE OF CONSULTANTS

When a local agency or utility owner employs a consulting engineer to perform engineering services in connection with a specific utility relocation and Federal participation is involved, the procedures in Chapter 10, "Consultant Selection" of this manual shall apply. The consultant agreement must satisfy the criteria specified in Section 13.14.11.00 of the Caltrans *Right of Way Manual*.

## NON-FEDERAL PARTICIPATING UTILITY RELOCATION

When Federal participation will not be requested for utility relocation, the local agency may use their own utility relocation procedures, however;

- The local agency must provide Caltrans with the required utility certifications mentioned in Section 14.6, "High and Low Risk Underground Facilities" of this chapter and in Chapter 13, "Right of Way," of this manual.
- The certifications should be reviewed and verified in accordance with the State's policy, and

The Caltrans District Utility Coordinator should review the utility relocation plan in order that proper right of way certification, ensuring project control, may be given prior to construction.

## 14.4 SPECIAL ADVANCED AUTHORIZATIONS

Special authorizations to accomplish unforeseen utility relocation work, both written or oral, must be kept to a minimum. They are reserved for those cases where required work could not be identified in time to secure normal authorization or when the contractor's operations will be delayed. They are not to be used simply because the work necessary to support approval for a relocation has not been done. These authorizations require a full explanation of the special circumstances by the local agency. A statement will then be added to the Specific Authorization.

### VERBAL AUTHORIZATION DURING CONSTRUCTION

If, during construction, a previously unknown utility conflict which will delay the construction contractor is discovered, the Caltrans District Utility Coordinator should be contacted by telephone or fax and verbal authorization requested. The request should contain an explanation of the need for the verbal authorization, along with the information required for "preliminary" Specific Authorization shown below under "Unforeseen Work" (except the plan).

If verbal authorization is obtained, a written submittal confirming the information and containing a fully documented relocation plan must be furnished within 30 days. An appropriate diary shall be maintained of decisions and discussions. The Caltrans District Utility Coordinator will confirm each verbal authorization by letter.

### UNFORESEEN WORK

A request for special written "preliminary" Specific Authorization may be submitted if an unanticipated physical relocation must begin before the information required to process a normal Request for Specific Authorization can be obtained. The submittal shall contain:

- Reason for special authorization
- Best available liability information
- Best available cost estimate
- Breakdown of time, material, and equipment
- Relocation plan showing the highway right of way, access control, existing and proposed utility
- The name of the individual who will do the work (if it's the owner's contractor, state how the contractor was selected)

The approval should contain a statement that the Caltrans District Utility Coordinator has reviewed the relocation plans and is familiar with the circumstances requiring advanced "preliminary" Authorization.

Requests for advanced "Preliminary" Specific Authorization must be based on a substantial reason and should be held to a minimum. It is incumbent upon the local agency to make a timely request since it will take several days for the Caltrans District Utility Coordinator to respond.

## 14.5 UTILITY AGREEMENTS

If Federal participation in the utility relocations is desired, the Utility Agreements shall include the provisions in Exhibits 14-B and 14-C.

Caltrans will provide the local agency with written approval for each utility agreement. Any exceptions to approval will be noted in writing and the local agency will be requested to concur with the exceptions or to prepare a rebuttal. It is anticipated that agreement will be reached on all such items prior to the voucher stage so that citations will be avoided.

State law (Section 705 of the Streets and Highway Code) requires that credit to a highway project will be required for the accrued depreciation of a utility facility being replaced. Where these credits are received by the local agency they must be properly reflected in determining the costs eligible for Federal-aid participation.

FHWA regulations (23 CFR 645.117(h)) prohibit reimbursement for the costs of removing utility facilities under a utility transaction unless salvage credits are received for the removed facilities. This includes facilities replaced as a part of a relocation.

Where the entire utility transaction consists of removal without replacement, consideration should be given to handling it as a right of way clearance item and vouchering for Federal reimbursement in that fashion. If this is done, the following conditions apply:

- The utility owner must have a property right in the existing location, which is compensable in eminent domain.
- Enter into an agreement with the owner providing for the removal of the facility. In support of the voucher for Federal reimbursement, the file must contain information to show that the cost of removal by the utility owner was more cost effective than the local agency's buying the facilities and having them removed by some other method.

Where legitimate "removal without replacement" charges are included in a utility owner's invoice and the local agency has not arranged to receive a credit for salvage, the charges may be vouchered for Federal reimbursement when they are reduced by the amount of salvage attributable to the subject facilities, as shown by the utility owner's records and available for audit.

FHWA regulations generally prohibit payment of interest during construction, or interest on funds borrowed by the owner.

Whenever the estimated cost of a utility relocation has been included in the data submitted to Caltrans in support of a right of way project agreement, and it is later determined that all or a portion of the work will be done by the local agency's highway contractor (paid for by construction funds) steps should be taken to remove the estimated cost of such work from the right of way estimate.

Where utility relocation work is performed by the local agency under right of way clearance contract a conformed copy of the executed contract must be forwarded to the State.

All engineering decisions affecting the utility relocation, from the beginning of planning to the completion of relocation and billing, should be documented by written notation in the local agency utility file, together with the reasons therefore.

## **14.6 HIGH AND LOW RISK UNDERGROUND FACILITIES**

All Caltrans administered local agency projects (off the State highway system) shall conform to the State's "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way," a copy of which may be obtained from Caltrans Office of Project Planning and Design. The local agency's Project Engineer must complete the Project Engineers Certification required by the policy.

For local agency administered projects (off the State highway system) compliance with the policy is not required.

## **14.7 AUDIT REQUIREMENTS**

A Caltrans' pre-award evaluation is required for negotiated utility agreements, contracts and subcontracts involving Federal funds. An audit may be necessary on agreements which exceed \$250,000, for lump sum agreements over \$100,000 or where a consultant will perform preliminary engineering exceeding \$100,000 (see your Caltrans District Utility Coordinator for current authorization limits and details).

The State is responsible to conduct final audits of costs incurred by utility owners pursuant to an agreement or contract on Federal-aid projects. This also applies to subcontractors under the prime agreement.

Utility owners, contractors, and subcontractors are required to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred; and to make such materials available for inspection at their respective offices at all reasonable times during the contract period and for three years from the date of final payment for State and/or Federal audit.

In order to provide complete information for an audit, the billings must show separate detailed and itemized line items of work performed by each consultant, utility owner, or any other party to the contract. Complete detailed and itemized documentation including copies of subcontracts and voucher support on all cost items must be attached to the progress and/or final billings being forwarded to the State for reimbursement.

The Caltrans District Utility Coordinator shall ensure that all necessary requests, information and documentation are submitted to Caltrans Audits Office. Prior Specific Authorization must have been obtained from the Caltrans District Utility Coordinator for the utility relocation if the local agency is requesting Federal participation.



## SUBMITTAL REQUIREMENTS

### FOR FEDERAL PARTICIPATION IN UTILITY RELOCATIONS

To obtain Federal participation for a specific utility relocation, a request for “Specific Authorization” must be submitted to Caltrans. The request must contain the following:

1. A color coded plan, prepared on highway layout sheets, clearly and accurately showing the following:
  - Existing and proposed right of way lines
  - Existing and proposed access control lines (if applicable)
  - Existing and proposed highway centerline
  - For the existing and for the proposed utility facility, show their:
    - a) Location
    - b) Type
    - c) Size
    - d) Length
  - Clearly plot and label the type of property rights the owner is claiming as a prior right (if applicable)
  - Clearly plot and label the type of proposed property rights to be supplied by the State (if applicable)
  - Show geometric features if the relocation is related to them
  - Provide a color coded legend and title block on the plan
2. One copy of a detailed estimate of cost showing, as a minimum, the following:
  - 
  - Estimated cost of labor
  - Estimated cost of materials (list the major items of materials)
  - Estimated cost of transportation and equipment
  - Estimated cost of overhead (include a list of major components)
  - Estimated cost of any new right of way required
  - Estimated credit for salvage and depreciation
  - Estimated credit for betterment

The estimate submitted with the request for Specific Authorization must contain an entry for each of the items listed above. If a particular item is not applicable, a zero amount shall be shown.

Unit costs such as broad gauge units of property may be used for estimate purposes where the utility owner uses such units in its own operation. These costs normally include overhead, labor, transportation, equipment and materials. Right of way costs and estimated credits must be given separately. If this type of estimate is used it must be identified as a “broad gauge” estimate.

If it is not possible to obtain an adequate estimate from the owner, the local agency may prepare an estimate based on the owner’s plan using current cost data from similar utility relocation work. Justification for use of an estimate prepared by the local agency must be submitted with the request.

If the estimate is to be used for a lump sum agreement, Federal regulations require that it must be accurate, comprehensive, verifiable, and in sufficient detail to give a clear picture of the work involved and the cost of the individual items. The estimate should be broken down by:

- Direct labor by class, rate and time
- Labor surcharges
- Overhead and indirect construction charges
- Materials and supplies, by item, quantity and price

- Handling charges
- Transportation
- Equipment by size, type, rate and time
- Preliminary engineering
- Construction engineering
- Salvage and depreciation credits
- Betterment credit
- Other items as required by 23 CFR 645

Utility owners should be advised that lump sum agreements cannot be entered into on Federal-aid project unless the owners are prepared to supply the required detailed estimate in the planning stage.

Federal regulations prohibit this type of agreement on amounts in excess of \$100,000.

3. Copies of the proposed utilities agreement, and Notice to Owner
4. Documentation supporting owner's claim of prior rights
5. A letter of transmittal in triplicate requesting Specific Authorization containing:
  - The file data including county, route, notice number, utilities agreement number (if different), Federal project number, and name of utility owner. If both right of way and construction funds are involved, the right of way and construction Federal project numbers must be shown (the utilities agreement must also contain both numbers). If all of the work is to be performed by the highway contractor, only the construction Federal project number need be shown.
  - Location of the work by geographical limits
  - General description of what is to be done including a list of the major facilities involved
  - A statement describing who will perform the work. In order to comply with Federal requirements, the transmittal must contain one or more of the following statements as applicable:

**THE WORK WILL BE PERFORMED BY:**

**The utility owner's forces:** The local agency has determined this is cost-effective and has verified the owner is qualified to perform the work in a satisfactory manner with its own personnel and equipment.

**The utility owner's continuing contractor:** The local agency has determined this is cost-effective and verified the contract between the owner and the contractor is in writing and the similar work is regularly performed for the owner under the contract at reasonable costs.

**Competitive bid contract:** The owner is not adequately staffed or equipped to perform the work with its own forces. The local agency will verify that the utility owner will award the contract for the work to the lowest qualified responsible bidder based on an appropriate solicitation.

**The local agency's highway contractor:** The utility work is to be included in the local agency's highway construction contract. The local agency has determined this is the most cost-effective method.

The local agency is responsible for making the determination and documenting within a statement the following:

- The dates between which it is anticipated that the work will be performed
- A determination as to whether the local agency's payment standards or 23 CFR 645 payment standards are more restrictive and the reasons supporting said determination
- An explanation of any significant difference between the existing facility and the proposed rearrangement as shown on the plans and the estimate of cost. For example: If an increase in size or capacity is shown on the plans, and betterment credits are not reflected in the estimate, an explanation and justification must be included.
- If prior rights of the owner are involved and a Joint Use Agreement or Consent to Common Use Agreement is required, include the following statement:

“Joint Use Agreement(s) or Consent to Common Use Agreement(s) will be executed by both parties, and an original copy will be retained by the local agency.”
- If the utility will occupy any portion of the new highway right of way and does not have prior rights in the old location, include a statement that the relocation plan does not contain encroachments contrary to the policy of the authority having jurisdiction over the right of way and that the appropriate standard encroachment permit will be issued.

**NOTE:** The local agency, with the approval of the district, may develop and use a standard transmittal form based on the “Report of Investigation,” Form 13-3 in the Caltrans *Right of Way Manual*. This form was substantially modified in 1996.

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## UTILITY AGREEMENT PROVISIONS FOR FEDERAL PARTICIPATION

The following provisions apply to utility agreements on federally participating utility relocations:

1. The Federal project number identification (right of way or construction, whichever is appropriate) must be stamped or typed on each copy of the agreement.
2. The utility agreement must contain the following:
  - The basis for liability
  - A description of the work
  - The location of the work
  - A schedule for accomplishing the work
  - The method of performing the work
  - Provision for an acceptable method of developing relocation costs
  - The agreement must incorporate 23 CFR 645 by reference using one of the following:

“It is understood that said highway is a Federal-aid highway and accordingly, 23 CFR 645 is hereby incorporated into this agreement.”

Where the owner protests the inclusion of 23 CFR 645:

“It is understood that said highway is a Federal-aid highway and accordingly, 23 CFR 645 is hereby incorporated into this agreement with the understanding that provisions governing reimbursement procedures are applicable to the relationship between the local agency, the State, and the United States.”

“Incorporation of 23 CFR 645 is not required in agreements with Federal agencies.”

Refer to Exhibit 14-C for more utility clauses. Section 13.07.00.00 of the Caltrans *Right of Way Manual* may be used as a guide for the preparation of Utility Agreements.

3. Where the actual cost of the utility relocation exceeds by 25% of the estimated cost included in the utilities agreement, an amendment to the utilities agreement must be prepared and executed.
4. The Caltrans District Utility Coordinator must approve each utilities agreement. If an executed copy of the agreement was not submitted to the State with the request for Specific Authorization, a complete, conformed copy must be forwarded to the State immediately after execution and approval, but not later than the date of the first schedule under said agreement (also applies to amendments).

The following must be included with the transmittal:

- Two copies of the transmittal memorandum
- One copy of a detailed estimate of cost (not needed if a satisfactory estimate was included with the request for authorization and there is no significant change)
- One set of “as built” plans, if complete or a statement that there is no significant change from the plan previously submitted

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## UTILITY AGREEMENTS CLAUSES

Use of these clauses will reduce errors and omissions as well as save preparation, review, and approval time as the clauses have been pre-reviewed and approved by most major Utility Owners. The clauses are numbered numerically, in no particular order, for each section of the Utility Agreement. The Utility Coordinator preparing the Agreement will need to select the appropriate clause(s) for each section. Some of the clauses pertain to involvement with State highway right of way; a careful analysis should be made for the appropriate clauses.

### **Section I. Work to be Done:**

#### **I-1. Work Performed by Owner per Owner's Plan:**

"In accordance with Notice to Owner No. \_\_\_\_\_ dated \_\_\_\_\_, OWNER shall \_\_\_\_\_. All work shall be performed substantially in accordance with OWNER's Plan No. \_\_\_\_\_ dated \_\_\_\_\_ consisting of \_\_\_\_\_ sheets, a copy of which is on file in the Office of the LOCAL AGENCY at \_\_\_\_\_. Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner."

**NOTE:** Significant changes in previously approved plans and estimates requires a revised FHWA Specific Authorization.

#### **I-2. Work Performed by Local Agency's Contractor per Local Agency's Plans:**

"In accordance with Notice to Owner No. \_\_\_\_\_ dated \_\_\_\_\_, LOCAL AGENCY shall relocate OWNER's \_\_\_\_\_ as shown on LOCAL AGENCY's contract plans for the improvement of \_\_\_\_\_ which by this reference are made a part hereof. OWNER hereby acknowledges review of LOCAL AGENCY's plans for work and agrees to the construction in the manner proposed.

Deviations from the plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work during construction. Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

**NOTE:**

Whenever liability is determined pursuant to Water Code Sections 7034 or 7035, Standard Clauses I-2, 3 or 4 may be modified by the deletion of the sentence: "Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facility." (Also clause V-10 will need to be added to the Agreement.)

**I-3. Work Performed by Local Agency's Contractor per Owner's Plan:**

"In accordance with Notice to Owner No. \_\_\_\_\_ dated \_\_\_\_\_, LOCAL AGENCY shall relocate OWNER's \_\_\_\_\_ as shown on OWNER's Plan No. \_\_\_\_\_ dated \_\_\_\_\_, which plans are included in LOCAL AGENCY's Contract Plans for the improvement of \_\_\_\_\_ which, by this reference, are made a part hereof.

Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner. OWNER shall have the right to inspect the work by LOCAL AGENCY's contractor during construction. Upon completion of the work by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

**NOTE:** See NOTE under Clause I-2.

**I-4. Work Performed by Both Owner and Local Agency's Contractor per Owner's Plan:**

"In accordance with Notice to Owner No. \_\_\_\_\_ dated \_\_\_\_\_ OWNER shall \_\_\_\_\_ All work shall be performed substantially in accordance with OWNER's Plan No. \_\_\_\_\_ dated \_\_\_\_\_ consisting of \_\_\_\_\_ sheets, a copy of which is on file in the Office of the LOCAL AGENCY at \_\_\_\_\_."

"Deviations from the OWNER's plan described above initiated by either the LOCAL AGENCY or the OWNER, shall be agreed upon by both parties hereto under a Revised Notice to Owner. Such Revised Notices to Owner, approved by the LOCAL AGENCY and acknowledged by the OWNER, will constitute an approved revision of the OWNER's plan described above and are hereby made a part hereof. No work under said deviation shall commence prior to receipt by the OWNER of the Revised Notice to Owner. Changes in the scope of the work will require an amendment to this Agreement in addition to the revised Notice to Owner."

"It is mutually agreed that the LOCAL AGENCY will include the work of \_\_\_\_\_ as part of the LOCAL AGENCY's highway construction contract. OWNER shall have access to all phases of the work to be performed by the LOCAL AGENCY for the purpose of inspection to ensure that the work being performed for the OWNER is in accordance with the specifications contained in the highway contract. Upon completion of the work performed by LOCAL AGENCY, OWNER agrees to accept ownership and maintenance of the constructed facilities and relinquishes to LOCAL AGENCY ownership of the replaced facilities."

**NOTE:** See NOTE under Clause I-2.

**Section II. Liability for Work:**

**II-1. Local Agency's Expense - S&HC Section 702 or 703:**

"The existing facilities are lawfully maintained in their present location and qualify for relocation at LOCAL AGENCY expense under the provisions of Section (702) (703) of the Streets And Highways Code."



II-2. Local Agency's Expense - S&HC 704:

"This is a second or subsequent relocation of existing facilities within a period of ten years; therefore, relocation is at LOCAL AGENCY expense under the provisions of Section 704 of the Streets And Highways Code."

II-3. Local Agency's Expense - Superior Rights:

"Existing facilities are located in their present position pursuant to rights superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY expense."

II-4. Local Agency's Expense - Service Line on Private Property:

"The facilities are services installed and maintained on private property required for highway purposes and will be relocated at LOCAL AGENCY expense."

II-5. Local Agency's Expense - Prescriptive Rights:

"The existing facilities are located in their present position pursuant to prescriptive rights prior and superior to those of the LOCAL AGENCY and will be relocated at LOCAL AGENCY expense."

II-6. Owner's Expense - Encroachment Permit:

"The existing facilities are located within the LOCAL AGENCY's right of way under permit and will be relocated at OWNER's expense under the provisions of Section (673) (680) of the Streets and Highways Code."

II-7. Owner's Expense - Trespass:

"The existing facilities are located within the LOCAL AGENCY's right of way in trespass and will be relocated at OWNER's expense."

II-8. Local Agency or Prorated Expense - Right of Way Contract:

"The existing facilities described in Section I. above will be relocated (at LOCAL AGENCY expense) (at \_\_\_\_\_% LOCAL AGENCY expense and \_\_\_\_\_% OWNER expense) as set forth in Right Of Way Contract No. \_\_\_\_\_ dated \_\_\_\_\_."

II-9. Local Agency or Prorated Expense - Master Agreement:

"The existing facilities described in Section I. above will be relocated (at LOCAL AGENCY expense) (at \_\_\_\_\_% LOCAL AGENCY expense and \_\_\_\_\_% OWNER expense) in accordance with (Section \_\_\_\_\_ of the Master Agreement dated \_\_\_\_\_.) (Sections \_\_\_\_\_ of the Master Agreement dated \_\_\_\_\_ in accordance with the following proration: \_\_\_\_\_.)"

**NOTE:** Where liability for portions of the utility facility to be relocated will be based on different sections of the Master Agreement, the equation used to develop the overall percentage of liability is to be included in the Agreement.

II-10. Prorated Expense - No Master Agreement:

"The existing facilities described in Section I. above will be relocated at \_\_\_\_\_% LOCAL AGENCY expense and \_\_\_\_\_% OWNER expense in accordance with the following proration: \_\_\_\_\_."

**NOTE:** Insert the equation used to develop the overall percentage of liability for the relocation following the word "proration."

**II-11. PG&E Master Agreement - Potholing:**

"The cost of potholing for purposes of locating OWNER's utility facilities as described in Section I. above shall be at fifty (50) percent LOCAL AGENCY expense and fifty (50) percent OWNER expense in accordance with Section 9 (G) of the Master Contract dated April 16, 1952. Should LOCAL AGENCY subsequently require OWNER to undertake the rearrangement of OWNER's underground facility as a result of it being in conflict with LOCAL AGENCY's project, then the parties hereto agree that the potholing cost shall be borne by LOCAL AGENCY and OWNER in like manner as for the ordered rearrangement."

**II-12 Liability in Dispute - Deposit is not a Waiver of Rights**

"Ordered work described as \_\_\_\_\_ is in dispute under Section \_\_\_\_\_ of the Streets and Highway Code. In signing this Agreement neither LOCAL AGENCY nor OWNER shall diminish their position nor waive any of their rights nor does either party accept liability for the disputed work. LOCAL AGENCY and OWNER reserve the right to have liability resolved by future negotiations or by an action in a court of competent jurisdiction."

**NOTE:** The appropriate Payment for Work clause (IV-1, 2, 8 or 9) must also be modified by inclusion of "after final liability determination and" immediately following "90 days".

**Section III. Performance of Work:**

**III-1. Owner's Forces or Continuing Contractor Performs Work:**

"OWNER agrees to perform the herein-described work with its own forces or to cause the herein-described work to be performed by the OWNER's contractor, employed by written contract on a continuing basis to perform work of this type, and to provide and furnish all necessary labor, materials, tools and equipment required therefore, and to prosecute said work diligently to completion."

**III-2. Owner Performs Work by Competitive Bid Process:**

"OWNER agrees to cause the herein-described work to be performed by a contract with the lowest qualified bidder, selected pursuant to a valid competitive bidding procedure, and to furnish or cause to be furnished all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion."

**III-3. Local Agency's Contractor Performs All or Portion of Work:**

"OWNER shall have access to all phases of the relocation work to be performed by LOCAL AGENCY for the purpose of inspection to ensure that the work is in accordance with the specifications contained in the Highway Contract; however, all questions regarding the work being performed will be directed to LOCAL AGENCY's Resident Engineer for their evaluation and final disposition."

**III-4. Owner to Hire Consulting Engineer:**

"Engineering services for locating, making of surveys, preparation of plans, specifications, estimates, supervision, inspection, \_\_\_\_\_ (delete or add services as established by the Owner's Agreement with the consultant) are to be furnished by the consulting engineering firm of \_\_\_\_\_ on a fee basis previously approved by LOCAL AGENCY. Cost principles for determining the reasonableness and allowability of consultant costs shall be determined in accordance with 48 Code of Federal Regulations, Chapter 1, Part 31."

**III-5. Owner and Local Agency's Contractor Performs Work:**

"OWNER agrees to perform the herein described work, excepting that work being performed by the LOCAL AGENCY's highway contractor, with its own forces and to provide and furnish all necessary labor, materials, tools, and equipment required therefore, and to prosecute said work diligently to completion."

**Section IV. Payment for Work:****IV-1. Owner Operates Under PUC or FCC Rules:**

"The LOCAL AGENCY shall pay its share of the actual cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER by the California Public Utilities Commission or Federal Communications Commission, whichever is applicable.

"It is understood and agreed that the LOCAL AGENCY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the LOCAL AGENCY for all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

**NOTES:**

(1) When a lump-sum payment method is to be used, substitute Clause IV-8 or IV-9 as appropriate for Clause IV-1 or IV-2 and IV-3.

(2) See Clause IV-10 for work being done by Local Agency's contractor.

**IV-2. Owner Does Not Operate Under PUC or FCC Rules:**

"The LOCAL AGENCY shall pay its share of the actual cost of the herein described work within 90 days after receipt of OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual cost and expense. The OWNER shall maintain records of the actual costs incurred and charged or allocated to the project in accordance with recognized accounting principles."

"It is understood and agreed that the LOCAL AGENCY will not pay for any betterment or increase in capacity of OWNER's facilities in the new location and that OWNER shall give credit to the LOCAL AGENCY for all accrued depreciation on the replaced facilities and for the salvage value of any material or parts salvaged and retained or sold by OWNER."

**NOTES:**

(1) Section 705 of the S&H Code states that publicly-owned sewers on freeways do not need to give credits for accrued depreciation. In these cases the following words "... for all accrued depreciation on the replaced facilities and ..." shall be eliminated from the second paragraph above.

(2) See Clause IV-1 for work done being done by Local Agency's contractor.

**IV-3. For All Owners - Progress/Final Bills:**

"Not more frequently than once a month, but at least quarterly, OWNER will prepare and submit progress bills for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work. Payment of progress bills not to exceed the amount of this Agreement may be made under the terms of this agreement. Payment of progress bills which exceed the amount of this Agreement may be made after receipt and approval by LOCAL AGENCY of documentation supporting the cost increase and after an Amendment to this Agreement has been executed by the parties to this Agreement."

"The OWNER shall submit a final bill to the LOCAL AGENCY within 180 days after the completion of the work described in Section I. above. If the LOCAL AGENCY has not received a final bill within 180 days after notification of completion of OWNER's work described in Section I. of this agreement, and LOCAL AGENCY has delivered to OWNER fully executed Director's Deeds, Consents to Common Use or Joint Use Agreements as required for OWNER's facilities, LOCAL AGENCY will provide written notification to OWNER of its intent to close its file within 30 days and OWNER hereby acknowledges, to the extent allowed by law, that all remaining costs will be deemed to have been abandoned."

"The final billing shall be in the form of an itemized statement of the total costs charged to the project, less the credits provided for in this Agreement, and less any amounts covered by progress billings. However, the LOCAL AGENCY shall not pay final bills which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER. If the final bill exceeds the OWNER's estimated costs solely as the result of a revised Notice to Owner as provided for in Section I, a copy of said revised Notice to Owner shall suffice as documentation."

"In any event if the final bill exceeds 125% of the estimated cost of this agreement, an Amended Agreement shall be executed by the parties to this agreement prior to the payment of the OWNERS final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement, shall have the prior concurrence of LOCAL AGENCY."

"Detailed records from which the billing is compiled shall be retained by the OWNER for a period of three years from the date of the final bill and will be available for audit in accordance with audit principles and standards as set forth in 48 CFR, Chapter 1, Part 31 by LOCAL AGENCY and/or Federal auditors."

**NOTES:**

(1) See NOTE under Clause IV-1.

(2) Audit standards of 48 CFR, Part 31 have been accepted as Caltrans standard for all projects.

**IV-4. Advance of Funds - Local Agency Liability:**

"OWNER, at the present time, does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of \$\_\_\_\_\_. LOCAL AGENCY agrees to advance to OWNER the sum of \$\_\_\_\_\_ to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$\_\_\_\_\_ will be deposited by the LOCAL AGENCY with

OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance."

"It is further agreed that upon receipt of the monies agreed upon to be advanced by LOCAL AGENCY herein, OWNER will deposit said monies in a separate interest-bearing account or trust fund in state or national banks in California having the legal custody of said monies in accordance with and subject to the applicable provisions of Section 53630, et seq., of the Government Code; and all interest earned by said monies advanced by LOCAL AGENCY and deposited as provided for above shall be credited to LOCAL AGENCY."

"In the event actual relocation costs as established herein are less than the sum of money advanced by LOCAL AGENCY to OWNER, OWNER hereby agrees to refund to LOCAL AGENCY the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to OWNER, in accordance with the provisions of this Agreement, LOCAL AGENCY will reimburse OWNER said excess costs upon receipt of five (5) copies of an itemized bill as set forth herein."

**NOTE:** Generally advance of funds should not exceed 90% of the Agreement amount due to possible credits for depreciation, salvage, etc. No funds should be advanced to cover owner initiated betterments.

IV-5. Loan of Funds - Owner Liability:

"OWNER recognizes its legal obligation to relocate its facility at its own cost, but, at the present time does not have sufficient funds available to proceed with the relocation of OWNER's facilities provided for herein. It is estimated that the cost of the work provided for by this Agreement and, as hereinafter set forth, is the sum of \$\_\_\_\_\_. LOCAL AGENCY agrees to advance to OWNER the sum of \$\_\_\_\_\_, in accordance with Section 706 of the Streets and Highways code, to apply to the cost of the work to be undertaken as provided hereinabove. Said sum of \$\_\_\_\_\_ will be deposited by the LOCAL AGENCY with OWNER within 45 days after execution of the Agreement by the parties hereto and upon receipt of an OWNER's bill for the advance."

"It is understood that OWNER shall pay interest upon receipt of said advance. The rate of interest shall be the rate of earnings of the California Surplus Money Investment Fund and computation shall be in accordance with Section 1268.350 of the Code Of Civil Procedure."

IV-6. Agreement for Identified Betterments:

"It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of \$\_\_\_\_\_ (which represents \_\_\_\_% of the estimate dated \_\_\_\_\_. Said \_\_\_\_% shall be applied to the actual cost of work done), and OWNER shall credit the LOCAL AGENCY for the actual cost of said betterment, all of the accrued depreciation and the salvage value of any materials or parts salvaged and retained by OWNER."

IV-7. Local Agency Performs Work - Owner Requested Betterments:

"The LOCAL AGENCY shall perform the work under Section I above at no expense to OWNER except as hereinafter provided."

"It is understood that the relocation as herein contemplated includes betterment to OWNER's facilities by reason of increased capacity in the estimated amount of \$\_\_\_\_\_, said amount to be deposited upon demand in the \_\_\_\_\_ Office of the LOCAL AGENCY, prior to the time that the subject freeway/highway contract bid is opened by the LOCAL AGENCY. The final betterment payment shall be calculated based upon the actual quantities installed as determined by the LOCAL AGENCY's engineer, and the current cost data as determined from the records of the OWNER. In addition, the

OWNER shall credit the LOCAL AGENCY at the time of the final billing for all the accrued depreciation and the salvage value of any material or parts salvaged and retained by the OWNER."

**IV-8. Lump-Sum/Flat-Sum Billing Agreements (Excluding Pac Bell):**

"Upon completion of the work, and within 90 days after receipt of OWNER's bill in quintuplicate, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, LOCAL AGENCY will pay OWNER the lump sum amount of \$\_\_\_\_\_. The above lump sum amount has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation and salvage."

**NOTE:** For lump-sum amounts in excess of \$25,000, the following clause should be added.

"LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000, that LOCAL AGENCY shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of LOCAL AGENCY's audit shall be to establish the continued acceptability of using lump sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump sum amount herein agreed to. OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill".

**IV-9. Lump-Sum/Flat-Sum Pac Bell Billing Agreements:**

"Upon completion of the potholing and relocation work, and within 90 days after receipt of OWNER's bill in quintuplicate, signed by a responsible official of OWNER's organization, and prepared on OWNER's letterhead, LOCAL AGENCY will pay OWNER the lump sum amount of \$\_\_\_\_\_. The above lump sum amount, for the physical relocation work, has been agreed upon between the LOCAL AGENCY and the OWNER and includes any credits due the LOCAL AGENCY for betterment, depreciation and salvage."

"In addition to the amount specified above, the LOCAL AGENCY will pay the OWNER an additional amount of \$\_\_\_\_\_ for each pothole location requested by the LOCAL AGENCY in order to determine the location of the OWNER's facilities. It is estimated that \_\_\_\_\_ pothole locations will be required. The final cost for potholing will be the lump sum amount of \$\_\_\_\_\_ per pothole location times the actual number of pothole locations."

**NOTE:** For lump-sum amounts in excess of \$25,000, the following clause should be added.

"LOCAL AGENCY and OWNER further agree that for lump sum payments in excess of \$25,000, that LOCAL AGENCY shall have the option of performing an informal audit of OWNER's detailed records from which the billing is compiled. The purpose of LOCAL AGENCY's audit shall be to establish the continued acceptability of using lump sum payments for high cost relocations and shall not in any way affect the amount or acceptability of the lump sum amount herein agreed to. OWNER shall keep supporting detailed records available for LOCAL AGENCY review for a period of one year following OWNER's submittal of final bill."

**IV-10. Local Agency's Contractor Performs Portion of Work-Owner Liability:**

**NOTE:** Insert the following Clause after Clause IV-1 or IV-2.

"The OWNER shall pay its share of the actual cost of said work included in the LOCAL AGENCY's highway construction contract within 90 days after receipt of LOCAL AGENCY's bill, compiled on the basis of the actual bid price of said contract. The estimated cost to OWNER for the work being performed by the LOCAL AGENCY's highway contractor is \$\_\_\_\_\_."

"In the event actual final relocation costs as established herein are less than the sum of money advanced by OWNER to LOCAL AGENCY, LOCAL AGENCY hereby agrees to refund to OWNER the difference between said actual cost and the sum of money so advanced. In the event that the actual cost of relocation exceeds the amount of money advanced to LOCAL AGENCY, in accordance with the provisions of this Agreement, OWNER hereby agrees to reimburse LOCAL AGENCY said deficient costs upon receipt of an itemized bill as set forth herein."

### **Section V. General Conditions:**

#### **V-1. Local Agency Liable for Review and Design Costs, and Project Cancellation Procedure Clause:**

"All costs accrued by OWNER as a result of LOCAL AGENCY's request of     (date)     to review, study and/or prepare relocation plans and estimates for the project associated with this Agreement may be billed pursuant to the terms and conditions of this Agreement."

"If LOCAL AGENCY's project which precipitated this Agreement is canceled or modified so as to eliminate the necessity of work by OWNER, LOCAL AGENCY will notify OWNER in writing and LOCAL AGENCY reserves the right to terminate this Agreement by Amendment. The Amendment shall provide mutually acceptable terms and conditions for terminating the Agreement."

#### **V-2. For All Owners - Notice of Completion:**

"OWNER shall submit a Notice of Completion to the LOCAL AGENCY within 30 days of the completion of the work described herein."

#### **V-3. Owner to Acquire New Rights of Way:**

"Total consideration for rights of way to be acquired by OWNER for this relocation shall not exceed (e.g., \$2,500) unless prior approval is given by the LOCAL AGENCY. Said property shall be appraised and acquired in accordance with lawful acquisition procedures."

**NOTE:** A reasonable easement cost limitation should be stated to preclude excessive acquisition cost.

#### **V-4. Local Agency to Provide New Rights of Way Over State Lands:**

"Such Easement Deeds as deemed necessary by the LOCAL AGENCY will be delivered to OWNER, conveying new rights of way for portions of the facilities relocated under this Agreement, over available LOCAL AGENCY owned property outside the limits of the highway right of way."

"LOCAL AGENCY's liability for the new rights of way will be at the proration shown for the relocation work involved under this Agreement."

**NOTE:** New rights of way means a right of way described in the same language as found in the OWNER's document by which it acquired, or held, its original right of way.

#### **V-5. Local Agency to Provide New Rights of Way Over Private Lands:**

"LOCAL AGENCY will acquire new rights of way in the name of either the LOCAL AGENCY or OWNER through negotiation or condemnation and when acquired in LOCAL AGENCY's name, shall convey same to OWNER by Easement Deed. LOCAL AGENCY's liability for such rights of way will be at the proration shown for relocation work involved under this Agreement."

**NOTE:** New rights of way means a right of way described in the same language as found in the OWNER's document by which it acquired, or held, its original right of way. In those cases where the OWNER requests acquisition be made in their name, it will be permissible to negotiate or condemn in their name, providing the OWNER has the power to condemn and the Local Agency has OWNER's consent for condemnation on OWNER's behalf. The above paragraph should be revised accordingly.

V-6. JUA or CCUA to be issued:

"Where OWNER has prior rights in areas which will be within the highway right of way and where OWNER's facilities will remain on or be relocated on LOCAL AGENCY highway right of way, a Joint Use Agreement or Consent to Common Use Agreement shall be executed by the parties."

V-7. Master Agreement Specifies Equal Replacement Rights:

"Upon completion of the work to be done by LOCAL AGENCY in accordance with the above-mentioned plans and specifications, the new facilities shall become the property of OWNER, and OWNER shall have the same rights in the new location that it had in the old location."

V-8. Federal Aid Clause - No Master Agreement:

"It is understood that said highway is a Federal aid highway and accordingly, 23 CFR 645 is hereby incorporated into this Agreement."

V-9. Federal Aid Clause - Master Agreement:

"It is understood that said highway is a Federal aid highway and accordingly 23 CFR 645 is hereby incorporated into this Agreement by reference; provided, however, that the provisions of any agreements entered into between the LOCAL AGENCY and the OWNER pursuant to State law for apportioning the obligations and costs to be borne by each, or the use of accounting procedures prescribed by the applicable Federal or State regulatory body and approved by the Federal Highway Administration, shall govern in lieu of the requirements of said 23 CFR 645."

**NOTE:** The FHWA allows liability to be determined in accordance with the terms of Master Agreements in lieu of otherwise applicable S&H Code sections.

V-10. Facilities Replaced per Liability Determination Under Water Code Sections 7034 & 7035:

"Inasmuch as Water Code Section (7034) (7035) requires LOCAL AGENCY to be responsible for the structural maintenance of the conduit portion of OWNER's facilities which transports water under the highway at Engineer's Station \_\_\_\_\_, LOCAL AGENCY will repair or replace the conduit portion of OWNER's facilities which lies within the LOCAL AGENCY highway right of way when such becomes necessary unless such repair or replacement is made necessary by negligent or wrongful acts of the OWNER, its agents, contractors or employees; provided that the OWNER shall keep the conduit clean and free from obstruction, debris, and other substances so as to ensure the free passage of water in said conduit. In no event shall LOCAL AGENCY be liable for any betterments, changes or alterations in said facility made by or at the request of the OWNER for its benefit."

**NOTE:** See NOTE under Clause I-2 and Section 13.11.05.01.